

ATTACHMENT 86

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,)
)
Plaintiff,)
)
vs.) Case No.
) 3:21-CV-03496-VC
INTUITIVE SURGICAL, INC.,)
)
Defendant.)
-----)

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF GREG POSDAL
30(B)(6), SURGICAL INSTRUMENT SERVICE COMPANY

Tuesday, November 1, 2022
Remotely Testifying from Phoenix, Arizona

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5541334-A

1 that what SIS calls the recovery program?

2 A. It is.

3 Q. What is the -- how -- how does the
4 resetting program work?

5 A. To my understanding -- and this goes back 09:18:52
6 to probably the middle of 2019, I visited Rebotix at
7 their location. And Chris Gibson walked me through
8 the process of adding an electronic device that
9 would allow the -- the addition of ten more uses.

10 Q. SIS does not itself perform the resetting 09:19:22
11 process; correct?

12 A. It -- that is correct.

13 Q. When's the last time SIS facilitated a
14 chip reset for one of its customers?

15 A. I couldn't be sure, but it was probably 09:19:39
16 2019 or '20, that that whole issue was shut down
17 pretty quickly.

18 Q. How does the recovery program work?

19 A. The recovery program is simply getting the
20 device from the customer, attaching a device that 09:20:08
21 could read only the number of lives left on it, and
22 returning it to the customer.

23 Q. I'll focus first on the reset program.

24 Did SIS perform any testing of its own
25 regarding the reset program before SIS first 09:20:30

1 marketed it?

2 A. No. We were in a partnership with Rebotix
3 for a number of -- Benjamin Biomedical and Rebotix,
4 they do some repairs and some components for us,
5 harmonic scalpels and Phaco handpieces and video 09:20:49
6 cameras, which are considerably more complex in the
7 EndoWrist we're speaking about, and they have --
8 they had done a great job of those over the number
9 of years.

10 We saw their test results and -- and as I 09:21:05
11 had mentioned prior, the visit to Rebotix where we
12 walked through the process, and we were satisfied
13 that the testing they'd done -- they had done was
14 adequate, especially with regard to our expertise
15 in -- in regular instrument device repair for the 09:21:22
16 last 50 years. The only thing that's really
17 different about this process is the chip counter
18 itself.

19 Q. Okay. So I -- I understand that SIS may
20 have had a partnership with Rebotix. But my 09:21:38
21 question was -- was focused solely on testing that
22 SIS did itself.

23 And I'm -- I'm correct in understanding
24 that SIS did not perform any of its own testing for
25 the reset process; correct? 09:21:50

1 A. That is correct.

2 Q. Did SIS itself engage any third parties to
3 perform testing regarding the reset process
4 before --

5 A. Only -- 09:22:00

6 Q. -- marketing it --

7 (Simultaneous speaking.)

8 (Interruption in audio/video.)

9 THE COURT REPORTER: I'm sorry. There was
10 a word that got cut out. Please repeat. 09:22:04

11 MR. CHAPUT: Yes.

12 BY MR. CHAPUT:

13 Q. Did SIS itself engage any third parties to
14 perform testing regarding the reset process before
15 marketing it? 09:22:12

16 A. No. Only Rebotix.

17 Q. What testing did Rebotix perform before
18 SIS started marketing the reset process?

19 A. I -- I don't have any of that information
20 in front of me. But it was fairly extensive, a 09:22:32
21 bunch of ISO certifications, reprocessing tests
22 through, I think, up to 50 uses or more. I think
23 that was about -- I -- I'm sure they -- they did
24 more testing to get that product finished, but I'm
25 not privy to that information. 09:22:53

Page 24

1 management activities described on page '132?

2 A. No.

3 Q. The next heading is "Development Process."

4 Do you see that section?

5 A. Yes, I do. 09:28:57

6 Q. This states that "Extensive validation and
7 safety testing occurred during the development of
8 the service process."

9 Did SIS have any involvement in that
10 validation and safety testing? 09:29:09

11 A. No.

12 Q. In the third sentence of that same
13 paragraph it refers to "A complete technical file
14 describing qualification activities and independent
15 testing." 09:29:22

16 Do you see that reference?

17 A. I do.

18 Q. Does SIS have access to the complete
19 technical file?

20 A. No. 09:29:29

21 Q. Has SIS ever had access to the complete
22 technical file?

23 A. Not to my knowledge.

24 Q. Jumping forward a couple pages, please to
25 the page ending '135, heading "Electrical and 09:29:43

Page 29

1 Electrosurgical Safety."

2 A. Okay.

3 Q. This refers to 'Electrical/Electrosurgical

4 safety testing that was conducted using a third

5 party independent test lab." [As read]

09:30:02

6 Do you see that statement?

7 A. I do.

8 Q. Who performed that

9 electrical/electrosurgical safety testing?

10 A. I do not know.

09:30:10

11 Q. Did SIS have any involvement in that

12 testing?

13 A. No, they did not.

14 Q. On the next page, there's a section with

15 the heading --

09:30:23

16 (Interruption in audio/video.)

17 THE COURT REPORTER: There was an

18 interruption. If you could start over, please.

19 BY MR. CHAPUT:

20 Q. Certainly.

09:30:29

21 On page '136, there's a heading "Usability

22 Engineering."

23 Do you see that section, Mr. Posdal?

24 A. I do.

25 Q. Who performed the usability engineering?

09:30:37

Page 30

1 A. I do not know.

2 Q. Did SIS have any involvement in the
3 usability engineering?

4 A. No.

5 Q. The first sentence of this paragraph 09:30:50
6 reads, "The services have been designed to maintain
7 the exterior specification, connection, use
8 application, user profile, or frequently used
9 functions when compared to the original devices
10 produced by the OEM." 09:31:10

11 There's no mention of interior
12 specifications here; is that correct?

13 A. That appears to be correct, yes.

14 Q. Did the process maintain the original
15 interior specifications of the Intuitive EndoWrist 09:31:24
16 instruments?

17 A. From my observation, yes, with the
18 exception of the additional electronic device to add
19 uses.

20 Q. Right. 09:31:43

21 So Rebotix added a chip that was not part
22 of Intuitive's original interior specifications;
23 correct?

24 A. To my knowledge, that is correct. Yes.

25 Q. On the same page, there's a discussion of 09:31:52

Page 31

1 the reliability/performance test summary.

2 Do you see that section?

3 A. I do.

4 Q. Who performed the re- -- reliability and

5 performance testing? 09:32:09

6 A. I would assume it was Rebotix.

7 Q. But you don't know, one way or the other?

8 A. No. If they had subcontracted that out to
9 someone, I would have no -- no way of knowing.

10 Q. Did you ask? 09:32:21

11 A. I don't believe I did.

12 Q. If you turn to the next page, you'll see
13 there's a series of bullets. And then, I'm looking
14 at the paragraph just after the bullets, if we
15 can -- "Following the OEM characterization." 09:32:38

16 A. Yes.

17 Q. And in this paragraph, it describes
18 instruments undergoing the use counter reset process
19 and going through certain testing; is that right?

20 A. I see that. 09:32:55

21 Q. Okay. How many instruments went through
22 this testing process?

23 A. Off the top of my head, I don't know. It
24 might be in this document. It specifies the number
25 of -- of devices that went through that. I don't 09:33:13

Page 32

1 Q. 136. This is page 10 out of 25 in the
2 PDF.

3 A. Sorry. The page number again? '124 --

4 Q. '124, 10 out of 25.

5 A. Okay. 10:35:22

6 Q. Okay. And so this document has the title
7 on the left-hand side, "da Vinci EndoWrist Repairs"?

8 A. Yes.

9 Q. Do you see that?

10 And then the -- the first or -- or the 10:35:31
11 second -- second sentence says: "SIS can now
12 service your da Vinci devices including repair and
13 use counter reset"?

14 A. Correct.

15 Q. All right. 10:35:39

16 And then looking at the second bullet
17 point in the list of "Important facts," that bullet
18 reads: "The repair of da Vinci EndoWrist does not
19 alter the intended use, method of use, functionality
20 or performance of the device in any way." 10:35:52

21 Is that correct?

22 A. That is correct.

23 Q. Okay. And this da Vinci EndoWrist Repairs
24 document is a document that SIS gave to customers in
25 marketing the EndoWrist reset process; correct? 10:36:04

Page 65

1 A. I -- I would imagine that's accurate, yes.

2 Q. Okay. So looking again at -- at that
3 bullet that we just read, what did SIS do to confirm
4 the accuracy of that statement?

5 A. This, again, much like some of the earlier 10:36:19
6 discussion, was generated by Rebotix, our partner at
7 the time, that it had gone through the testing, that
8 was their statement. We simply rebranded it.

9 Q. SIS did not do anything to confirm that it
10 was accurate, that "The repair of da Vinci EndoWrist 10:36:46
11 does not alter the intended use, method of use,
12 functionality or performance of the device in any
13 way"; correct?

14 A. That is correct.

15 MR. McCAULLEY: Objection to form. 10:36:57
16 BY MR. CHAPUT:

17 Q. Let's look, now, at the fourth bullet. In
18 the third sentence of that bullet it states: "The
19 repaired device will function identically to the new
20 OEM EndoWrist." 10:37:10

21 Do you see that statement?

22 A. I do.

23 Q. Okay. What did SIS do to confirm the
24 accuracy of that statement?

25 A. Nothing more than rely on Rebotix and 10:37:20

1 their testing and process and procedures.

2 Q. Okay. So SIS did not do anything to
3 confirm that it was accurate that the repaired
4 device will function identically to the new OEM

5 EndoWrist; correct? 10:37:38

6 MR. McCAULLEY: Ob- -- objection to form.

7 THE WITNESS: Correct.

8 BY MR. CHAPUT:

9 Q. Now, looking at the fifth bullet, this
10 says that the repaired EndoWrist is, quote, "an 10:37:50
11 original da Vinci manufactured device that has been
12 repaired to original specifications"; is that
13 correct?

14 A. Yes.

15 Q. What is the basis for that statement? 10:38:06

16 A. Again, this was directly out of the
17 Rebotix documentation and simply rebranded.

18 Q. So SIS did not do anything to confirm that
19 it was accurate that a repaired EndoWrist is an
20 original da Vinci manufactured device that has been 10:38:23
21 repaired to original specifications; correct?

22 MR. McCAULLEY: Objection. Form.

23 THE WITNESS: That's correct.

24 BY MR. CHAPUT:

25 Q. We can move on to Topic 9. This is: "The 10:38:44

Page 67

CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth remotely via videoconference and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [x] was [] was not requested.

In witness whereof, I have hereunto subscribed my name: November 15, 2022.



Hanna Kim, CLR, CSR No. 13083